

**APPENDIX A**  
**PARTIES' PROPOSED CLAIM CONSTRUCTIONS**

| <b>Ref. No.</b> | <b>Term(s) to be Construed</b> | <b>Patent(s)</b>           | <b>Claim(s)</b>                             | <b>Plaintiffs' Proposed Construction</b>  | <b>Defendant's Proposed Construction</b>   |
|-----------------|--------------------------------|----------------------------|---|---|--|
| 1.              | extract                        | 5,968,567<br><br>6,177,122 | 18<br><br>1, 2, 5,<br>6, 7, 8,<br>9, 10, 12 | The substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from manipulation of one or more of cruciferous sprouts, seeds, plants, and/or plant parts, where the manipulation causes the separation of component fractions of the cruciferous sprouts, seeds, plants, and/or plant parts. | <p>By focusing on a single word, Plaintiffs are ignoring the context of the balance of each claim.</p> <p>“Extract” in the context of claim 18 of the ‘567 patent means “material removed from a solid by use of a solvent, wherein the extract can contain the removed material and the solvent,” wherein the extract is prepared according to the method of any one of claims 9, 16 or 17.</p> <p>In the context of claims 1, 2, 5 - 8 of the ‘122 patent, “extract” means “material removed from a crucifer seed or cruciferous sprout by use of a non-toxic solvent, wherein the extract can contain the removed material and the solvent.”</p> <p>In the context of claims 9, 10, and 12 of the ‘122 patent, “extract” means “material removed from a crucifer seed or cruciferous sprout by use of a solvent, wherein the extract can contain the removed material and the solvent.”</p> |
| 2.              | Row Intentionally Left Blank   |                            |   |   |  |

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|-----------------|--------------------------------|---|--|---|---|
| 3.              | Food product                   | 5,725,895<br>5,968,567<br>6,177,122<br>6,242,018<br>7,303,770 | 14, 15<br>9, 16, 18<br>6, 7, 8, 12<br>1, 2<br>10, 13, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26 | Any ingestible substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors.   | "Food product" means any ingestible preparation containing the sprouts of the instant invention, which are identified and have the characteristics described in the '895 patent specification, at col. 10, l. 28 - col. 11, l. 17, or extracts or preparations made from these sprouts, which are capable of delivering Phase 2 inducers to the mammal ingesting the food product.  |
| 4.              | Human Food Product             | 5,968,567<br>7,303,770  | 9, 16, 18<br>10, 13, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26                                  | Plaintiffs disagree that this term requires construction separately from the construction of the term "food product." <i>See above.</i> Accordingly, a "human food product" is simply a "food product" which is suitable for human consumption. | "Human food product" means any ingestible preparation containing the sprouts of the instant invention, which are identified and have the characteristics described in the '895 patent specification, at col. 10, l. 28 - col. 11, l. 17, or extracts or preparations made from these sprouts, which are capable of delivering Phase 2 inducers to the mammal ingesting the food product, wherein the mammal is a human being. |

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|-----------------|--------------------------------|---|--|---|--|
| 5.              | Cruciferous;<br>Crucifer       | 5,725,895<br><br>5,968,567<br><br>6,177,122<br><br>6,242,018<br><br>7,303,770 | 14, 15<br><br>9, 16, 18<br><br>1, 2, 5,<br>6, 7, 8,<br>9, 10, 12<br><br>1, 2<br><br>10, 13,<br>15, 16,<br>17, 18,<br>19, 20,<br>21, 22,<br>23, 24,<br>26 | Plaintiffs disagree that this term requires special construction. "Cruciferous" and "Crucifer" are synonymous; they mean plants of the family <i>Cruciferae</i> . | "Crucifer" or "cruciferous" means of or related to the sprouts of the instant invention, which are identified and have the characteristics described in the '895 patent specification, at col. 10, l. 28 - col. 11, l. 17. |
| 6.              | Plant tissue                   | 7,307,770   | 10, 13,<br>15, 16,<br>17, 18,<br>19, 20,<br>21, 22,<br>23, 24,<br>26   | Plaintiffs disagree that this term requires special construction. "Plant tissue" is any tissue of a plant, including sprouts, seeds, plants, and plant parts.     | "Plant tissue" is the fresh, soft, fragile plant parts, particularly leaves and stems, capable of being "wounded" by rough handling and so does not include seed.  |

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|-----------------|--|------------------------|-----------------|--|---|
| 7.              | Non-toxic levels of indole glucosinolates and their breakdown products and goitrogenic hydroxybutenyl glucosinolates | 5,725,895<br>6,242,018 | 14, 15<br>2     | Plaintiffs disagree that this term requires special construction. There is no evidence that one of ordinary skill in the art would not understand how to determine what levels of the recited compounds are toxic. | The patent does not specify what a non-toxic level of these compounds is and so the term is indefinite. |

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|-----------------|---|------------------|-----------------|---|---|
| 8.              | Extracting glucosinolates and isothiocyanates with a non-toxic solvent and isothiocyanates from cruciferous seeds, sprouts, plants or plant parts | 5,725,895        | 15              | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracting." <i>See "Extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means exposing cruciferous seeds, sprouts, plants, or plant parts to a non-toxic solvent in a manner that causes the separation of component fractions of the cruciferous sprouts, seeds, plants, and/or plant parts, and where at least one component fraction contains beneficial amounts of glucosinolates and isothiocyanates.</p> | <p>"Extracting ... from" means the process of removing glucosinolates and isothiocyanates by a solvent from solid material, <i>i.e.</i>, seeds, sprouts, etc.</p> <p>This claim is ambiguous and capable of two constructions. As such it is indefinite.</p> <p>It can be construed to mean removing both glucosinolates and isothiocyanates from cruciferous seeds, sprouts, plants or plant parts (as those are defined above) using a non-toxic liquid solvent; and removing isothiocyanates from cruciferous seeds, sprouts, plants or plant parts (as those are defined above) using any liquid solvent.</p> <p>Alternatively, it can be construed to mean removing both glucosinolates and isothiocyanates from cruciferous seeds, sprouts, plants or plant parts (as those are defined above) using a liquid mixture of non-toxic solvent and isothiocyanates.</p> |

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|-----------------|---|----------------------------|---|---|---|
| 9.              | Extracting ... from   | 5,968,567<br><br>7,303,770 | 9, 16, 18<br><br>10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracting." <i>See "Extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," the term means manipulating one or more of cruciferous sprouts, seeds, plants, and/or plant parts, where the manipulation causes the separation of component fractions of the cruciferous sprouts, seeds, plants, and/or plant parts, and where at least one component fraction contains beneficial amounts of glucosinolates and isothiocyanates.</p> | "Extracting ... from" means the process of removing glucosinolates and isothiocyanates by a solvent from solid material, <i>i.e.</i> , the cruciferous seeds, sprouts, or combination (as set forth in the claims and as those terms are defined above).                |
| 10.             | Removing the extracted sprouts, seeds, or a combination thereof from said solvent | 5,968,567                  | 9, 16, 18   | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracted." <i>See "Extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means that, following exposure of sprouts and/or seeds to a solvent, the fraction containing the solvent is separated from the fraction containing the sprouts and/or seeds.</p>  | "Removing the extracted sprouts, seeds, or a combination thereof from said solvent" means that the sprouts, seeds or combination thereof from which the glucosinolates and isothiocyanates have been removed by a solvent are then themselves taken out of the solvent. |

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|-----------------|---|------------------------|-----------------|--|---|
| 11.             | Recovering the extracted glucosinolates and isothiocyanates | 5,725,895<br>5,968,567 | 15<br>9, 16, 18 | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracted." See <i>"Extract" above</i>.</p> <p>Applying Plaintiffs' proposed construction of "extract," this term means that, following the separation of the fraction containing sprouts and/or seeds from the fraction containing the solvent, the fraction rich in glucosinolates and isothiocyanates is retained for further processing.</p> | "Recovering the extracted glucosinolates and isothiocyanates" means obtaining the glucosinolates and isothiocyanates that have been removed from the seeds, sprouts, or combination thereof by a solvent from the solvent by further processing such as evaporation, cooling, freezing, or freeze-drying. |
| 12.             | Drying said extracted glucosinolates and isothiocyanates    | 5,968,567              | 16, 18          | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracted." See <i>"Extract" above</i>.</p> <p>Applying Plaintiffs' proposed construction of "extract," this term means drying the glucosinolate- and isothiocyanate-rich fraction retained in the previous step.</p>  | "Drying said extracted glucosinolates and isothiocyanates" means obtaining the glucosinolates and isothiocyanates that have been removed from the sprouts, seeds, or a combination thereof by a solvent from the solvent by evaporation of the solvent.   |

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|-----------------|--|------------------|------------------|---|---|
| 13.             | An extract prepared according to the method of any one of claims 9, 16 or 17 | 5,968,567        | 18               | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." <i>See "extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means a substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from the method of any of claims 9, 16, or 17.</p>   | "An extract prepared according to the method of any one of claims 9, 16 or 17" means material removed from a solid by use of a solvent, wherein the extract can contain the removed material and the solvent, wherein the extract is prepared according to the method of any one of claims 9, 16 or 17. |
| 14.             | A non-toxic solvent extract of crucifer seed or cruciferous sprout           | 6,177,122        | 1, 2, 5, 6, 7, 8 | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." <i>See "extract," above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means the fraction containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from exposure of crucifer seed or sprouts to a non-toxic solvent, where the exposure to solvent causes the separation of component fractions of the cruciferous seed or sprouts.</p> | "A non-toxic solvent extract of crucifer seed or cruciferous sprout" means material removed from a crucifer seed or cruciferous sprout by use of a non-toxic solvent, wherein the extract can contain the removed material and the solvent.   |



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|-----------------|--|------------------|-----------------|---|---|
| 15.             | To extract said seed or sprout                         | 6,177,122        | 2               | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." <i>See "To extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means to manipulate seeds or sprouts where the manipulation causes the separation of component fractions of the seeds or sprouts, and where at least one component fraction contains beneficial amounts of Phase II enzyme inducers and/or their precursors.</p> | "To extract said seed or sprout" means to remove a material from seed or sprout by use of a solvent, wherein the solvent dissolves the material out of the seed or sprout.  |
| 16.             | Said extract is dried, cooled, frozen, or freeze-dried | 6,177,122        | 5               | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." <i>See "Extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means that the fraction containing beneficial amounts of Phase II enzyme inducers and/or their precursors is dried, cooled, frozen or freeze-dried.</p>   | "Said extract is dried, cooled, frozen, or freeze-dried" means material removed from a crucifer seed or cruciferous sprout by use of a non-toxic solvent, wherein the extract, which can contain the removed material and the solvent, is dried, cooled, frozen, or freeze-dried. |

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|-----------------|--------------------------------|------------------|-----------------|---|---|
| 17.             | The extract                    | 6,177,122        | 6, 7, 8         | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." <i>See "Extract" above.</i></p> <p>Applying Plaintiffs' proposed definition of "extract," this term means the substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from manipulation of one or more of cruciferous sprouts, seeds, plants, and/or plant parts, where the manipulation causes the separation of component fractions of the cruciferous sprouts, seeds, plants, and/or plant parts.</p> | <p>"The extract" means "material removed from a crucifer seed or cruciferous sprout by use of a non-toxic solvent, wherein the extract can contain the removed material and the solvent."</p> |

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|-----------------|--|------------------|--|--|---|
| 18.             | Extract of said seed                               | 6,177,122        | 9, 10, 12  | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." <i>See "Extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means the substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from manipulation of seeds, where the manipulation causes the separation of component fractions of the cruciferous seeds.</p> | "Extract of said seed" means "material removed from a seed by use of a non-toxic solvent, wherein the extract can contain the removed material and the solvent."  |
| 19.             | Recovering said glucosinolates and isothiocyanates | 7,303,770        | 10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 | <p>Plaintiffs disagree that this term requires special construction.</p> <p>This term means that, following the separation of the fraction containing sprouts and/or seeds from the fraction containing the solvent, the fraction rich in glucosinolates and isothiocyanates is retained for further processing.</p>   | "Recovering said glucosinolates and isothiocyanates" means obtaining the glucosinolates and isothiocyanates, which have been removed from the seeds or sprouts, from the solvent in which they reside by further processing of the extract, such as evaporation, cooling, freezing, or freeze-drying. |

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|-----------------|--|------------------|--|---|--|
| 20.             | At a temperature sufficient to inactivate myrosinase enzyme activity | 7,303,770        | 10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 | <p>Plaintiff disagree that this term requires special construction.</p> <p>The temperature sufficient to inactivate myrosinase enzyme activity will vary with the solvent chosen. Hot or boiling water will inactivate myrosinase activity, as will very cold (-50°C) organic solvents.</p> | <p>“At a temperature sufficient to inactivate myrosinase enzyme activity” means at a temperature of at least hot or boiling water.</p>   |
| 21.             | Homogenizing said plant tissue with said non-toxic solvent.          | 7,303,770        | 21   | <p>Plaintiffs disagree that this term requires special construction.</p> <p>This term means mixing the plant tissue with the non-toxic solvent in a manner that forms a homogeneous mixture.</p>  | <p>“Homogenizing said plant tissue with said non-toxic solvent” means grinding the plant tissue into such small pieces that it is dispersed evenly in the solvent. The plant sample must be completely homogenized, which is not explained in the patent specification and so is indefinite.</p> |